

**PRETRIAL INSTRUCTIONS FOR CRIMINAL CASES  
BEFORE THE HONORABLE MARGARET I. STRICKLAND  
UNITED STATES DISTRICT JUDGE**

---

**TRIAL PREPARATION IN CRIMINAL CASES** – *The following procedures shall be followed unless otherwise determined by the Court.*

**I. CALL OF THE CALENDAR**

1. Trial counsel must plan to appear on behalf of client. If unable to appear, please advise the Court no less than 24 hours before Call of the Calendar and arrange for substitute counsel.
2. Call of the Calendar is scheduled for the first Wednesday of the month, unless otherwise scheduled by the Court.
3. Please be prepared to address the following:
  - a. Number of days needed for trial; and
  - b. Motions to Continue. All motions to continue trial shall be filed no later than 24 hours prior to the Call of the Calendar and state the grounds for the motion in accordance with 18 U.S.C. § 3161(h)(7) and *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009).
4. Counsel also shall specify the number motions to continue that have been filed in the underlying case and shall specify the facts and circumstances giving rise to a continuance of trial setting. If the case is a multiple defendant case, counsel is to state in the motion each defendant's position in the motion and preferably file a joint motion to continue. Counsel shall provide chambers with a proposed Order.

*See* sample Order attached to these instructions. A sample Order in Word format may also be found under Criminal Forms on the Judge's webpage.

## **II. PRETRIAL DEADLINES**

1. Throughout these pretrial instructions, the term “trial” refers to the date set in the written notice for commencement of the trailing docket.
2. **Counsel must seek leave of the Court in the form of a written motion to extend any pretrial deadline.**
3. Where a submission deadline falls on a Saturday, Sunday or a holiday, the deadline becomes the next business day.

Event	Deadline	Comment
<b>Exhibit List</b>	Fourteen (14) days before trial	Counsel for each party shall file with the Clerk and provide to opposing counsel, a proposed exhibit list. <b>Counsel will specify for each exhibit the Rule(s) of Evidence or other legal authority upon which the admissions of the exhibit is sought.</b> A list of stipulated exhibits shall also be filed at this time.
	Five (5) days before trial	Counsel for each party shall file with the Clerk a complete list of all objections to the exhibits offered, specifying the Rule(s) of Evidence or other legal authority upon which an objection is based.
<b>Witness List</b>	Fourteen (14) days before trial	Counsel shall furnish a complete list of witnesses in the order to be called to opposing counsel and file that list with the Clerk. This list shall indicate any witness who will give expert testimony
<b>Deposition Testimony</b>	Fourteen (14) days before trial	Objections to use of deposition testimony shall be filed with the Clerk five (5) days before trial.
	Five (5) days before trial	The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing.
<b>Jury Instructions</b>	Fourteen (14) days before trial	Please refer to detailed requirements for jury instructions set out herein.
<b>Motions in Limine and any other admissibility issues</b>	Twenty-one (21) days before trial	Responses are due ten (10) days before trial. Replies to motions in limine will not be entertained unless specifically requested and allowed.
<b>*Daubert Motions and other pretrial motions</b>	Twenty-one (21) days before trial (unless otherwise set earlier by Court Order).	*Parties shall provide 30 days advance notice of intent to introduce expert testimony so that the Court has sufficient time before the trial to schedule a <i>Daubert</i> hearing, if necessary.

### III. MOTIONS IN LIMINE

Counsel is reminded of the following:

“The purpose of a motion in limine is to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial.” *Mendelsohn v. Sprint/United Mgmt. Co.*, 587 F. Supp. 2d 1201, 1208 (D. Kan. 2008) *aff’d*, 402 Fed.Appx. 337 (10th Cir. 2010) (internal quotations omitted). Accordingly, motions in limine “give the trial judge notice of the movant’s position so as to avoid the introduction of damaging evidence which may irretrievably effect the fairness of the trial.” *Stewart v. Hooters of Am., Inc.*, 2007 WL 1752843, at \*1 (M.D. Fla.).

While pretrial in limine rulings can save time and avoid interruptions at trial, “a court is almost always better situated during actual trial to assess the value and utility of evidence.” *Mendelsohn*, 587 F. Supp. 2d at 1208 (citation omitted). Consequently, motions in limine are disfavored and courts defer making in limine rulings unless the “evidence is clearly inadmissible on all potential grounds.” *Hawthorne Partners v. AT & T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993) (“Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context.”). *See also Stewart*, 2007 WL 1752843, at \*1. Moreover, litigants may not raise non-evidentiary matters in limine. *Louzon v. Ford Motor Co.*, 718 F.3d 556, 561 (6th Cir. 2013). In other words, parties may not litigate theories or defenses in a motion in limine which “have been or should have been resolved at an earlier stage” of litigation, such as in a motion for summary judgment. *Id.* Counsel also is reminded that “[a] ruling on a motion in limine is no more than a preliminary, or advisory, opinion that falls entirely within the discretion of the district court.” *United States v. Yannott*, 42 F.3d 999, 1007 (6th Cir. 1994). For that reason, the Court may amend its ruling during the course of trial. *Luce v. United States*, 469 U.S. 38, 41–42 (1984) (holding that in limine “ruling is subject to change when the case unfolds.... Indeed even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous *in limine* ruling.”).

### IV. EXHIBITS

1. **IN ORDER TO MAINTAIN EFFICIENCY AND ORGANIZATION OF THE COURT’S RECORD OF THE PARTIES’ NUMEROUS EXHIBITS DURING TRIAL, PARTIES SHALL FILE THEIR FINAL EXHIBIT LISTS WITH THE COURT PRIOR TO TRIAL.** Charts, plats, diagrams, etc., will be marked and ready as to measurements, landmarks, and other identifying factual

material before trial. Counsel is strongly encouraged to stipulate to exhibits wherever possible, particularly regarding their authenticity.

2. Exhibits shall be marked and identified (Plaintiff's on *yellow* labels by *numbers* and Defendant's on *blue* labels by *numbers*. Use of exhibit notebooks (Plaintiff's and Defendant's) is encouraged for those exhibits to which neither party has objections. Counsel is to identify each exhibit with its own individual number; do not group exhibits together, *e.g.*, photographs, diagrams, etc. These should be individually marked. If necessary, an exhibit which has subparts may be identified as Plaintiff's/Defendant's 1.1, 1.2, 1.3 . This step is not necessary if an exhibit has multiple pages and would normally be treated as a single document, *e.g.*, reports, letters, etc.

3. **REQUIRED FORMAT FOR EXHIBIT LIST, ELECTRONIC:** Exhibits will need to be submitted in electronic format. Refer to attached JERS Informational letter, along with the Attorney Guide to JERS for instructions on how to submit electronically formatted trial exhibits to the Court at **least 7 days before trial**.

#### **V. WITNESSES**

1. Clients and witnesses are expected to be on time, and counsel should always have witnesses available to fill a full trial day (*i.e.*, 9:00 a.m. - 5:00 p.m.).
2. Cumulative expert testimony will not be permitted.

#### **VI. DEPOSITION TESTIMONY**

1. Consistent with the Federal Rules of Criminal Procedure, deposition testimony may be introduced into evidence.
2. If a deposition is used in part, counsel shall mark the parts to be used for opposing counsel. The court copy shall also be marked. Plaintiff will use *yellow* marker and Defendant *blue* marker. This does not apply to cross-examination or rebuttal.

#### **VII. GUIDELINES FOR TRIAL**

1. The Court may schedule a pre-trial conference to be held 1-3 days prior to trial. During this conference, counsel shall be prepared to address any unresolved issues prior to the commencement of trial. Counsel is to bring copies of all exhibits with them to the pre-trial conference.
2. Trial will begin at 9:00 a.m. Counsel shall be in the courtroom no later than 8:30 a.m. and be prepared to discuss any matter that should be addressed outside the presence of the jury. Be on time for each court session. **Counsel shall follow the time as displayed on the clock inside the courtroom.** Trial engagements take

precedence over any other business. If you have matters in other courts, make other arrangements in advance for the handling of such matters.

3. A multi-day jury trial generally will recess at about 5:00 p.m. The Court generally will recess each morning and afternoon for a 15-minute comfort break and a 60-minute lunch break for attorneys (75-minutes for the jury).
4. Stand when you speak. Do not refer to any party or attorney by their first name. Always use surnames. Always address the Court only; do not address or argue with opposing counsel in the presence of the jury. If counsel must confer with one another, please request permission of the Court for a moment to do so privately and quietly.
5. When you object in the presence of the jury, make it short and to the point. Be prepared if asked by the Court to provide authority for the basis of the objection. Do not argue its merits in the presence of the jury. Do not argue the ruling in the presence of the jury.
6. Parties should notify the Court at least **two** weeks in advance of trial if they require audio-visual or other special equipment. If parties are unfamiliar with the operation of courtroom technology, they shall make arrangements with my Court Room Deputy, Jessica Chavez at (575)528-1683, to schedule a time to test and run the equipment. Parties are responsible for operating any of this equipment. ***Please bring in actual DVD(s) and/or other electronic or technical exhibits to be used in the trial to assure their compatibility with the Court's equipment.***

#### **VIII. PREPARATION OF JURY INSTRUCTIONS**

*Prepare your proposed jury instructions in accordance with these directions. File the proposed jury instructions with citations with the Clerk's office in accordance with D.N.M. LR-Cv 5.1 at least **FOURTEEN (14)** days before trial is scheduled. Refer to the Court's external website in order to access Judge Strickland's trial preparation materials: [www.nmcourt.fed.us](http://www.nmcourt.fed.us).*

1. Parties shall meet and confer in advance of the deadline to agree on as many instructions as possible. **PARTIES SHALL SUBMIT A SET OF MUTUALLY ACCEPTABLE JURY INSTRUCTIONS ON THE SUBSTANTIVE CLAIMS OR BE PREPARED TO SUBMIT A LEGAL BASIS FOR THEIR**

**OBJECTIONS TO EACH INSTRUCTION ON WHICH THEY DO NOT AGREE.**

2. Parties shall file written objections to an opposing parties' submitted instruction. These objections are due **THREE (3)** working days after jury instructions are due.

